

**UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF TENNESSEE  
NASHVILLE DIVISION**

**In Re:**

**AREDIA® AND ZOMETA® PRODUCTS  
LIABILITY LITIGATION**

**(MDL No. 1760)**

**This Document Relates to:**

**3:06-cv-1026 (*Summers*)**

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**No. 3:06-MD-1760**

**Judge Campbell/Brown**

**ORDER**

Martha Summers, the original plaintiff in this case, died on July 20, 2009. (MDL Doc. 3374; Related Case 13) A suggestion of death was filed on July 8, 2010. (MDL Doc. 3374; Related Case 13) A motion to substitute Todd Summers, the late Ms. Summers' son, was filed on October 6, 2010. (MDL Doc. 3753; Related Case 14) The motion to substitute Mr. Summers was granted October 12, 2010. (MDL Doc. 3769; Related Case 15)

An amended motion to substitute was filed on November 6, 2013. (MDL Doc. 7108; Related Case 70) The motion seeks to add Suzanne Graser, the late Ms. Summers' daughter, as a co-plaintiff in this action. (MDL Doc. 7108, 13, p. 2 & Ex. E; Related Case 70) Both Mr. Summers and Ms. Graser state the following in their sworn declarations: "No application or petition for the appointment of a personal representative of Martha Summer's estate is pending or has been granted in any jurisdiction." (MDL Doc. 7108, Ex. D-E, ¶ 5, p. 1; Related Case 70) Defendant Novartis Pharmaceuticals Corporation did not oppose the motion, and the time for it to do so has passed.

This case was the subject of the Magistrate Judge's September 23, 2013 14-case report and recommendation (R&R) that the District Judge adopted and approved on November 5, 2013. (MDL Doc. 7011, 7107; Related Case 59, 69) In that order, the District Judge instructed plaintiffs to do the following within thirty days of the date of entry of that order: 1) open probate; 2) provide proof

that probate has been opened; or 3) provide law and argument that there is an alternative procedure under state law to appoint a personal representative of a deceased plaintiff's estate. (MDL Doc. 7107, ¶ 4, p. 2; Related Case 69)

Plaintiff has provided law and argument that formal probate is not required under Utah law, and that the late Ms. Summers' right of action in this case passes to both Mr. Summers and Ms. Graser as her heirs as a matter of law. (MDL Doc. 7108, ¶¶ 9-11, p. 2 & Ex. A-C; Related Case 70) The amended motion to substitute (MDL Doc. 7108; Related Case 70) is **GRANTED**.

It is so **ORDERED**.

**ENTERED** this 5<sup>th</sup> day of December, 2013.

/s/Joe B. Brown  
Joe B. Brown  
United States Magistrate Judge